

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 511
Senate Judiciary Committee Substitute Adopted 6/26/19
Senate Judiciary Committee Substitute Adopted 7/10/19
Senate Judiciary Committee Substitute Adopted 10/9/19
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Short Title: North Carolina First Step Act.

(Public)

Sponsors:

Referred to:

April 1, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE JUDICIAL DISCRETION IN SENTENCING FOR DRUG
3 TRAFFICKING OFFENSES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** This act shall be known and may be cited as "The North Carolina First
6 Step Act."

7 **SECTION 2.(a)** G.S. 90-95(h) reads as rewritten:

8 "(h) Notwithstanding any other provision of law, the following provisions apply except as
9 otherwise provided in this Article.

10 ...

11 (5) Except as provided in this ~~subdivision~~, subdivision or subdivision (5a) of this
12 subsection, a person being sentenced under this subsection may not receive a
13 suspended sentence or be placed on probation. The sentencing judge may
14 reduce the fine, or impose a prison term less than the applicable minimum
15 prison term provided by this subsection, or suspend the prison term imposed
16 and place a person on probation when such person has, to the best of ~~his~~ the
17 person's knowledge, provided substantial assistance in the identification,
18 arrest, or conviction of any accomplices, accessories, co-conspirators, or
19 principals if the sentencing judge enters in the record a finding that the person
20 to be sentenced has rendered such substantial assistance.

21 (5a) A judge sentencing a person for a conviction pursuant to G.S. 90-95(h) or
22 G.S. 90-95(i) for conspiracy to commit a violation of G.S. 90-95(h) shall
23 impose the applicable minimum prison term provided by this subsection. The
24 sentencing judge may reduce the fine and sentence the person consistent with
25 the applicable offense classification and prior record level provided in
26 G.S. 15A-1340.17, if after a hearing and an opportunity for the district
27 attorney to present evidence, including evidence from the investigating law
28 enforcement officer, other law enforcement officers, or witnesses with
29 knowledge of the defendant's conduct at any time prior to sentencing, the
30 judge enters into the record specific findings that all of the following are met:

31 a. The defendant has accepted responsibility for the defendant's criminal
32 conduct.



- 1 b. The defendant has not previously been convicted of a felony under
2 G.S. 90-95.
- 3 c. The defendant did not use violence or a credible threat of violence, or
4 possess a firearm or other dangerous weapon, in the commission of the
5 offense for which the defendant is being sentenced.
- 6 d. The defendant did not use violence or a credible threat of violence, or
7 possess a firearm or other dangerous weapon, in the commission of
8 any other violation of law.
- 9 e. The defendant has admitted that he or she has a substance abuse
10 disorder involving a controlled substance and has successfully
11 completed a treatment program approved by the Court to address the
12 substance abuse disorder.
- 13 f. Imposition of the mandatory minimum prison term would result in
14 substantial injustice.
- 15 g. Imposition of the mandatory minimum prison sentence is not
16 necessary for the protection of the public.
- 17 h. The defendant is being sentenced solely for trafficking, or conspiracy
18 to commit trafficking, as a result of possession of a controlled
19 substance.
- 20 i. There is no substantial evidence that the defendant has ever engaged
21 in the transport for purpose of sale, sale, manufacture, or delivery of a
22 controlled substance or the intent to transport for purpose of sale, sell,
23 manufacture, or deliver a controlled substance.
- 24 j. The defendant, to the best of his or her knowledge, has provided all
25 reasonable assistance in the identification, arrest, or conviction of any
26 accomplices, accessories, co-conspirators, or principals.
- 27 k. The defendant is being sentenced for trafficking, or conspiracy to
28 commit trafficking, for possession of an amount of a controlled
29 substance that is not of a quantity greater than the lowest category for
30 which a defendant may be convicted for trafficking of that controlled
31 substance under G.S. 90-95(h).

32 "

33 **SECTION 2.(b)** This section becomes effective December 1, 2019, and applies to
34 sentences ordered on or after that date.

35 **SECTION 3.** G.S. 90-95 is amended by adding a new subsection to read:

36 "(j) Beginning December 1, 2020, and annually thereafter, the Administrative Office of
37 the Courts shall publish on its Web site a report on the number of sentences modified under
38 G.S. 90-95(h)(5a) in the prior calendar year."

39 **SECTION 4.(a)** Except as otherwise provided in this section, a person serving an
40 active sentence imposed solely for a violation of G.S. 90-95(h), or conspiracy to commit a
41 violation under G.S. 90-95(i), committed before the effective date of this section may file a
42 motion for appropriate relief in accordance with Article 89 of Chapter 15A of the General
43 Statutes for a modification of the person's sentence under the authority granted in
44 G.S. 90-95(h)(5a), as enacted in Section 2 of this act. A person sentenced under G.S. 90-95(h)(5)
45 is ineligible to file a motion for appropriate relief for a sentence modification under this section.
46 The court shall require the State to respond to a motion for appropriate relief filed pursuant to
47 this section within 60 days of the date of the filing and shall hold any hearing deemed necessary
48 by the court within 180 days of the date of the filing. Notwithstanding any provision of Article
49 89 of Chapter 15A of the General Statutes to the contrary, a motion for appropriate relief filed
50 pursuant to this section may only be granted if the following conditions are met:

- 1 (1) The motion for appropriate relief is filed within 36 months of the effective
2 date of this act.
- 3 (2) The person seeking a sentence modification has no other felony convictions
4 under G.S. 90-95.
- 5 (3) The person was convicted solely for trafficking, or conspiracy to commit
6 trafficking, as a result of possession of a controlled substance.
- 7 (4) The person seeking a sentence modification was sentenced for trafficking, or
8 conspiracy to commit trafficking, of a controlled substance that was not of a
9 quantity greater than the lowest category for which a defendant may be
10 convicted for trafficking of that controlled substance under G.S. 90-95(h).

11 If subdivisions (1), (2), (3), and (4) of this section are met, the court shall order that
12 the person be resentenced in accordance with G.S. 90-95(h)(5a).

13 **SECTION 4.(b)** This section becomes effective December 1, 2019, and applies to
14 sentences ordered on or before November 30, 2019.

15 **SECTION 5.(a)** The Department of Information Technology, Government Data
16 Analytics Center, shall conduct a statewide study to identify the criminal justice data elements
17 related to individuals who have been charged with infractions or criminal offenses that are
18 currently collected and maintained. The purpose of the study is to (i) identify gaps in data for use
19 by law enforcement, judicial officials, policymakers, and other stakeholders related to the
20 processing, detention, and adjudication of individuals charged with infractions or criminal
21 offenses and (ii) identify solutions for improving availability and accessibility of data available
22 to policymakers to inform public policy related to individuals who have been charged with
23 infractions or criminal offenses. In conducting this study, the Department may seek input from
24 agencies and organizations with relevant knowledge or information, including local or regional
25 detention facility administrators, the Administrative Office of the Courts, the University of North
26 Carolina at Chapel Hill School of Government, the North Carolina Sentencing and Policy
27 Advisory Commission, the North Carolina Sheriffs' Association, and the Division of Adult
28 Correction and Juvenile Justice.

29 **SECTION 5.(b)** The study shall examine all of the following issues:

- 30 (1) The data elements currently being collected by prisons and jails with regard
31 to individuals who have been charged with or incarcerated for criminal
32 offenses, and the current systems or systems planned or under development
33 for collecting, recording, maintaining, and searching these data elements.
- 34 (2) The data elements currently being collected by the courts with regard to
35 individuals who have been charged with infractions or criminal offenses,
36 including magistrates' records and information from the courtroom clerk such
37 as continuances, appearances, and failures to appear, and the current system
38 or systems planned or under development for collecting, recording,
39 maintaining, and searching these data elements.
- 40 (3) Steps that would be necessary to create a statewide program to integrate data
41 from courts, jails, and prison data systems, including options for integrating
42 data that currently are collected, as well as for addressing any data gaps
43 identified, and options for making data elements available to law enforcement,
44 judicial officials, and policymakers in an open electronic format. This
45 evaluation should include the costs and options to fund such a statewide data
46 integration program.
- 47 (4) A review of best practices of other states that collect and integrate criminal
48 justice data related to individuals who have been charged with infractions or
49 criminal offenses in an open electronic format. Best practices should include
50 solutions for privacy and data security issues, and whether the collection and

1 integration of data is through a system maintained and operated by the court
2 system or another State agency.
3 **SECTION 5.(c)** The Department shall report findings and recommendations to the
4 Joint Legislative Oversight Committee on Information Technology and the Joint Legislative
5 Oversight Committee on Justice and Public Safety no later than December 1, 2020.
6 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
7 law.